IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6192 of 2002
With
SPECIAL CIVIL APPLICATION No. 12695 of 2005
To
SPECIAL CIVIL APPLICATION No. 12967 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
HON'BLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CINEMATOGRAPH EXHIBITORS ASSO OF GUJARAT & 3 - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :
MR KG VAKHARIA with MR MK VAKHARIA for Petitioner No(s).: 1,2,3.
MR SIRAJ GORI, A.G.P. for Respondent No(s).: 1.
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CORAM :HON'BLE MR.JUSTICE B.J.SHETHNA
HON'BLE MR.JUSTICE M.C.PATEL

Date : 04/07/2005

ORAL COMMON JUDGMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

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1. All these matters are disposed of by this common order as the impugned Notification dated 9.2.1992 (Annexure : A) is challenged in all these petitions.

2. Special Civil Application No.6192 of 2002 is filed by Cinematograph Exhibitors Association of Gujarat (for short "the Association") and Rupam Cinema of Ahmedabad as well as Central Talkies of Gondal. Annexure : I is the list of cinema owners of 24 districts of Gujarat. They have thereafter filed separate one page petitions i.e. Special Civil Application No.12695 to 12967 of 2005.

3. The respondent No.1 – State of Gujarat has issued notification dated 9.2.2001 (Annexure : A) to the main Special Civil Application No.6192/02, fixing the minimum and maximum tax per show per theater and Video theater in Municipal Corporation, "A" Class Municipalities and other Municipalities on the basis of the third and final Report, submitted by the Finance Commission, constituted by the State Government by notification dated 15.9.1994, as it was found that the taxes on theater in Municipalities and the Corporation were too low. As per the impugned notification (Annexure:A) dated 9.2.2001 the Corporation and "A" class Municipalities were entitled to levy minimum entertainment tax of Rs.50/- and maximum Rs.125/- per show from each theater and for video theater it was Rs.25/- per show and for other

municipalities minimum tax was Rs.25/- and maximum was Rs.75/- per show per theater and Rs.10/- per show per video theater. Before approaching this Court, by way of aforesaid writ petitions, the petitioners had first approached the then Hon'ble Chief Minister of State of Gujarat by way of representation dated 22.3.2001 (Annexure:B) requesting him to reduce the taxes as the increase of tax by way of impugned notification (Annexure : A) was highly excessive. It is the case of the petitioners that thereafter they have made several, oral as well as written, representation. However, by letter dated 21.2.2002 (Annexure : C) the Association was informed that the State Government considered their representation in detail and after due consideration the State Government was of the opinion that the said representation cannot be accepted. Hence, first the Association and two theater owners filed joint petition, being Special Civil Application No.6192 of 2002 and later on others filed aforesaid one page petitions.

4. Learned Senior Advocate Shri K.G.Vakharia, appearing with Shri Mehul Vakharia for the petitioners in all these petitions vehemently submitted that it was not open to the respondent – State Government to increase the taxes on theater situated in the Corporation and Municipalities by issuing such notification (Annexure : A) without enacting proper legislation for it. Shri Vakharia submitted that Article 243-ZF of the Constitution of India clearly provides that “any provision of any law relating to Municipalities in force in a State immediately before the commencement

of the Constitution (74th Amendment) Act, 1992, which is inconsistent with the provisions of the part shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier". He submitted that admittedly without bringing any legislation the respondent – State had issued the impugned notification (Annexure : A) and increased the tax on theater in the limits of the Corporation and the Municipalities. Therefore, the impugned notification is required to be quashed and set aside. Shri Vakharia also submitted that the State Government has powers under Article 243-X of the Constitution by which it can authorize the Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits, but it can be done only by proper legislation under the Law. Admittedly, without bringing any legislation for it the State Government by impugned notification (Annexure : A) increased the taxes on theater, therefore, the impugned notification is required to be quashed and set aside.

5. At first look, the submission made by Shri Vakharia seems to be attractive, but on closed scrutiny and careful reading of Article 243-X and 243-ZF of the Constitution it is clear that this submission has no substance. In the instant case, in the past, by way of proper legislation the State Government had already authorized the Municipality to levy taxes and also prescribed the rates which is clear from the representation at

Annexure : B. What has been done by the respondent – State by issuing notification (Annexure : A) is to simply increase the rate of taxes on theater per show by prescribing the minimum to maximum rates so that no municipality or the Corporation can impose lower or higher tax and limits on both the side fixed. It is also clear from the impugned notification at Annexure:A as well as the Reply Affidavit that before increasing the rates on theater in the Municipalities and the Corporations of the State, the respondent – State had constituted Finance Commission on 15.9.1984 and in the third and final Report of the Finance Commission, the Finance Commission found the rates of tax on theater were too low, therefore, it had recommended increase on it. On the recommendation of the Finance Commission the State Government set up the high level Committee which had thoroughly gone through the same and, in turn, made its recommendation the State Government and accordingly the Taxes were increased. Therefore, we are of the considered opinion that for increasing the rates on taxes on theater no legislation was required and the State Government was in its competence to issue such notification. Hence, the submission made by Shri Vakharia cannot be accepted.

5. Shri Vakharia then half heartedly tried to argue the second submission by submitting that the increase in the rate of taxes on theater was highly excessive, knowing full well that prices of all commodities, cinema tickets have gone up like anything. The rates on which taxes were levied

on theater in past were too low. It was there since long without any increase on it for several years. When the rates of tickets and other things have gone up like anything in the recent past and the price of every thing have gone up then, in our considered opinion, some increase on theater tax after several years by the State cannot be said to be unreasonable. Before increasing the tax the State Government had set up the Finance Commission and after receiving its third and final Report the State Government had constituted high level committee which had carefully considered the Report of Finance Commission and in turn made recommendation to the State Government which was simply accepted by the State Government. Therefore, it cannot be said that without applying its mind the State Government had mechanically increased the rates of tax on theater per show excessively.

Except the aforesaid submissions no other submissions were made.

In view of the above discussion we do not find any substance in these petitions and accordingly these petitions fail and are hereby dismissed. Rule discharged in all the petitions. However, there shall be no order as to costs.

(B.J.SHETHNA, J.)

(M.C. PATEL, J.)

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